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Attorneys for Defendant R. Darr

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MATTHEW L. JOHNSON,

Plaintiff,

v.

DARR,

08-CV-0080-DMS (POR)

WYATT NOTICE TO PLAINTIFF

Hearing: August 28, 2008
Time: 2:00 p.m.
Courtroom: H
Judge: The Honorable
Louisa S. Porter

TO MATTHEW L. JOHNSON, Plaintiff in pro per:

PLEASE TAKE NOTICE that Defendant Darr has moved to dismiss one or more of Plaintiff's claims based on Plaintiff's failure to exhaust administrative remedies before filing suit as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e. A defendant may move to dismiss a claim for lack of exhaustion of nonjudicial remedies through an unenumerated Rule 12(b) motion. *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003).

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1 “In deciding a motion to dismiss for failure to exhaust nonjudicial remedies, the court
2 may look beyond the pleadings and decide disputed issues of fact.” *Id.* at 1119-1120. The
3 parties may tender admissible evidence to create an evidentiary record sufficient for the court to
4 determine if the plaintiff properly exhausted his or her administrative remedies before filing suit.
5 *See id.* at 1120 n.14. You have the right to file counter-affidavits or other responsive evidentiary
6 materials in opposition to Defendant’s motion to dismiss for lack of exhaustion of administrative
7 remedies. If you fail to produce such counter-evidence, Defendant’s evidence might be taken as
8 the truth, and the Court may grant Defendant’s motion. If the Court grants the motion to
9 dismiss, some or all of your claims in this litigation may be dismissed.

10 Dated: July 17, 2008

11 Respectfully submitted,

12 EDMUND G. BROWN JR.
Attorney General of the State of California

13 DAVID S. CHANEY
Chief Assistant Attorney General

14 ROCHELLE C. EAST
Acting Senior Assistant Attorney General

15 MICHELLE DES JARDINS
Supervising Deputy Attorney General

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17
18 /s/Phillip Lindsay

19 PHILLIP LINDSAY
20 Deputy Attorney General
Attorneys for Defendant

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Johnson, Matthew L. v. Darr**

No.: **08CV0080 DMS POR**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On July 18, 2008, I served the attached **WYATT NOTICE TO PLAINTIFF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

Matthew L. Johnson
D-33369
California Training Facility
DW-315 UP
CTF Central
P.O. Box 689
Soledad, CA 93960

In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 18, 2008, at San Diego, California.

K. Alvarez

Declarant

Signature